

DETAILED ACTION

Status of Claims

Claims 17-21 are pending in the instant application.

Status of Restriction Requirement

Applicant is reminded that the elected invention is drawn to compounds of the formula (I), wherein X is N or CR⁷ and ***wherein R⁷ = H*** (e.g., R⁷ can not form a radical with R¹). Claim 1 should be amended accordingly to embrace the elected invention.

Status of Claim Objections

The objection of claim 17 is maintained.

Applicant's amendments, see Remarks, filed 1/28/2010, with respect to the objection set forth in the Non-Final Office Action mailed 9/28/2009, have been fully considered but are not found persuasive. "arylC₁₋₆alkyl" is still recited twice as a substituent for moiety R¹² (see page 4, lines 3 and 6). Please amend accordingly. The objection of claim 20 is removed.

Status of Rejections

Double Patenting

The ODP rejections of claims 17-21 are maintained over copending applications 10/596086 and 10/595882 for the reasons of record.

35 USC § 112 (1st Paragraph)

The rejection of claims 17-19 and 21 is maintained.

Applicant's amendments, see Remarks, filed 1/28/2010, with respect to the rejection set forth in the Non-Final Office Action mailed 9/28/2009, have been fully considered but are not found persuasive. Claim 17 is still drawn to N-oxides of compounds of the formula (I) that were found to be non-enabled as set forth in the previous office action.

Conclusion

No claims are allowed. No rejected claim can be indicated as allowed. Claims may be free of the prior art, but rejected on the record for other reasons (e.g. ODP).

This application contains claims drawn to an invention nonelected with traverse in the reply filed on 1/28/2010. **A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.**

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN MCDOWELL whose telephone number is (571)270-5755. The examiner can normally be reached on Monday-Thursday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson can be reached 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1624

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRIAN MCDOWELL/
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**/James O. Wilson/
Supervisory Patent Examiner, AU 1624**